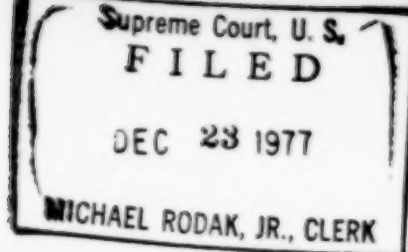


77-126



IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

No. A-1056

JÓSEPH A. CALIFANO, JR., SECRETARY OF HEALTH,
EDUCATION, AND WELFARE,

Appellant,

v.

CARMELO BRACERO COLON,

Et Al.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MOTION FOR SUMMARY AFFIRMANCE

SALVADOR TIO

Puerto Rico Legal Services, Inc.

P.O. Box 9134

Santurce, Puerto Rico 00908

Attorney for Appellee



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OPINION BELOW

The opinion of the district court (App. A, *infra*, pp. 1a-4a) is not reported.

JURISDICTION

The judgment of the district court was entered on March 29, 1977 (App. B, *infra*, pp. 5a-6a). Notice of appeal to this Court

was filed on April 27, 1977 (App. C, *infra*, p. 7a). On June 15, 1977, Mr. Justice Brennan extended the time for docketing the appeal to and including July 26, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1252. *Weinberger v. Salfi*, 422 U.S. 749, 763 n.8.

QUESTION PRESENTED

Whether Sections 1611(f) and 1614(e) of the Social Security Act, which exclude residents of Puerto Rico from eligibility for benefits under the Program of Supplemental Security Income for the Aged, Blind, and Disabled, deny due process, liberty to move freely to and from the United States and equal protection to them.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, Section 3, of the Constitution provides in pertinent part:

The Congress shall have Power to dispose and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *.

The Fifth Amendment to the Constitution provides in pertinent part:

No person shall * * * be deprived of life, liberty, or property, without due process of law * * *.

Section 1611(f) of the Social Security Act, as added, 87 Stat. 1468, 42 U.S.C. (Supp. V) 1382(f), provides:

Notwithstanding any other provision of this title, no individual shall be considered an eligible individual for [Supplemental Security Income benefits] * * * for any month during all of which such individual is outside the

United States (and no person shall be considered the eligible spouse of an individual for purposes of this title with respect to any month during all of which such person is outside the United States). For purposes of the preceding sentence, after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 consecutive days.

Section 1614(e) of the Social Security Act, as added, 86 Stat. 1473, 42 U.S.C. (Supp. V) 1382c(e), provides:

For purposes of this title, the term "United States," when used in the geographical sense, means the 50 States and the District of Columbia.

STATEMENT

Sections 1611(f) and 1614(e) of the Social Security Act, 42 U.S.C. (Supp. V) 1382(f) and 1382c(e), restrict eligibility for benefits under the program of Supplemental Security Income for the Aged, Blind, and Disabled, as added, 86 Stat. 1465, as amended, 42 U.S.C. (Supp. V) 1381 *et seq.*, to residents of the 50 States and the District of Columbia.¹ Appellees became eligible for and received benefits under the program while residing in the United States but lost those benefits when they moved to Puerto Rico. They brought this suit in the United

¹Section 1611(f) provides that persons residing outside the United States are ineligible for benefits, and Section 1614(e) defines "United States" to include only the 50 States and the District of Columbia. Residents of the Commonwealth of Puerto Rico and the territories of Guam, and the Virgin Islands continue to be eligible for benefits under pre-existing welfare programs otherwise repealed by the SSI program—Old Age Assistance, 49 Stat. 620, as amended, 42 U.S.C. 301 *et seq.*; Aid to the Blind, 49 Stat. 645, as amended, 42 U.S.C. 1201 *et seq.*; Aid to the Disabled, as added, 64 Stat. 555, and amended, 42 U.S.C. 1351 *et seq.*; and Aid to the Aged, Blind, and Disabled, as added, 76 Stat. 197, and amended, 42 U.S.C. 1381 *et seq.*, No. 77-88.

States District Court for the District of Puerto Rico, claiming that the exclusion of Puerto Rico from the SSI program unconstitutionally discriminates against Puerto Rican residents and violates appellees' constitutional right to travel (App. A, *infra*, pp. 2a-3a).² A single-judge district court, relying on the three-judge district court decision in *Torres v. Mathews*, No. 75-1331, decided February 14, 1977 (D.P.R.), pending on appeal *sub nom. Califano v. Torres*, No. 77-88, ruled that Sections 1611(f) and 1614(e) are unconstitutional because they interfere unduly with the right to travel of a citizen who moves to Puerto Rico after having received SSI benefits while residing in one of the 50 States or the District of Columbia.³

THE QUESTION IS INSUBSTANTIAL

This case presents the identical issue—the constitutionality of the exclusion of Puerto Rico from SSI program—as *Califano v. Torres*, *supra*, appeal docketed July 14, 1977. For the reasons stated in our motion for summary affirmance⁴ and in the Opinion of the District Court in *Torres v. Califano*, the question is insubstantial and should be summarily resolved by this Court.

²The Secretary stipulated that his denial of appellees' request for continued payment of benefits was final for purposes of 42 U.S.C. 405(g) (App. A, *infra*, p. 2a), and the district court therefore had jurisdiction over appellees' complaint. See *Mathews v. Diaz*, 426 U.S. 67, 73.

³District Judge Torruella, who presided below, also wrote the majority opinion in *Torres*.

⁴We are sending appellant's counsel a copy of the motion for summary affirmance in *Torres*.

CONCLUSION

The judgment of the District Court should be summarily affirmed.

Respectfully submitted,

SALVADOR TIO
Puerto Rico Legal Services

December 1977



APPENDIX A

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

Civil No. 76-1434

CARMELO BRACERO COLON, on behalf of his son, DELIO
BRACERO, NILDA MELENDEZ VEGA, PLAINTIFFS

vs.

DAVID MATTHEWS, Secretary of Health,
Education and Welfare, DEFENDANT

OPINION

Torruella, J.

Title XVI of the Social Security Act (SSA), 42 USC 1381 et seq., also known as the Supplemental Security Income (SSI) program,¹ establishes "a national program to provide supplemental security income to individuals who . . . are . . . disabled." 42 USC 1381. Pursuant to Section 1611(f) of the SSA, 42 USC 1382(f), no individual is eligible for these benefits during any month in which "such individual is outside the United States." Furthermore, the statute provides that once "an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 consecutive days." The term "dis-

¹ Public Law 92-603, October 30, 1972, 86 Stat. 1465.

abled" is defined, in part, as one who "is a resident of the United States." 42 USC 1382(a)(1)(B). In turn, Section 1614(e) of the SSA, 42 USC 1382(e), defines "United States, when used in a geographical sense" as indicated above, as meaning the 50 States and the District of Columbia.

Plaintiff Carmelo Bracero Colon was found eligible, on behalf of his son, Delio Bracero to receive SSI benefits due to disability while residing in Massachusetts.

Plaintiff Nilda Melendez Vega was found eligible to receive SSI benefits due to disability while residing in New Jersey.

While receiving said benefits, both plaintiffs moved to Puerto Rico, and the Social Security Administration proceeded to discontinue the benefits on the grounds that plaintiffs had rendered themselves ineligible by reason of their change of residence to Puerto Rico.

After several procedural interchanges the Administration has affirmed its decision as final for the purposes of 42 USC 405(g), thus concluding that no further exhaustion of administrative remedies is necessary. See *Matthews v. Eldridge*, 424 US 319 (1976); *Weinberger v. Salfi*, 422 US 749 (1975); 20 CFR 416 1424c.

Plaintiff contends that the exclusion from SSI benefits of a citizen of the United States for the sole reason of his change in residence to Puerto Rico, is repugnant to the Fifth Amendment of the Constitution of the United States in that it establishes an irrational and arbitrary classification violative of the

equal protection component of the due process clause of said Constitutional provision. Plaintiffs contend, moreover, that the cited sections of the statute under attack violate said equal protection components both under the equal protection strict scrutiny test, which is invoked on the grounds that the statute creates a suspect class and that it unduly interferes with plaintiffs' constitutional right to travel and freedom of movement in that it forces him, in order to qualify for these benefits (which to him are essential), to remain within the 50 States and the District of Columbia, and under the traditional rationality test.

A case with identical situation of fact and of law, *Cesar Gautier Torres v. Matthews*, (Civil No. 75-1331, DCPR) was recently decided by a three judge court (Feb. 14, 1977). In *Gautier Torres* this court struck down as repugnant to plaintiffs' constitutional rights the same sections of the statute questioned in the case at bar, after subjecting them to strict scrutiny due to their interference with the fundamental constitutional right to travel.

In view of the findings of this court in *Gautier Torres*, we hereby conclude that Section 1611(f) and Section 1614(e) of the SSA are unconstitutional and, as such, the Social Security Administration is hereby permanently restrained from discontinuing plaintiffs' benefits on the basis of their change of address to Puerto Rico.

The clerk shall enter judgment in accordance with this opinion.

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In San Juan, Puerto Rico, This 23 day of March,
1977.

/s/ J. R. Torruella
JUAN R. TORRUELLA
District Judge

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

Civil No. 76-1434

[Filed & Entered Mar. 29, 1977, Clerk, U.S. District
Court, San Juan, Puerto Rico]

CARMELO BRACERO COLON, on behalf of his son, DELIO
BRACERO, NILDA MELENDEZ VEGA, PLAINTIFFS

vs.

DAVID MATTHEWS, Secretary of Health,
Education and Welfare, DEFENDANT

JUDGMENT

The Court having entered an Opinion through
Honorable Juan R. Torruella finding that Section
1611(f) and Section 1614(e) of the Social Security
Act are unconstitutional,

IT IS ORDERED AND ADJUDGED
that Sections 1611(f) and Section 1614(e) of the
Social Security Act are unconstitutional and

IT IS FURTHER ORDERED AND ADJUDGED
that the Social Security Administration is perma-
nently restrained from discontinuing plaintiffs' bene-

6a

fits on the basis of their change of address to Puerto Rico.

SO ORDERED.

San Juan, Puerto Rico, this 28 day of March, 1977.

DENNIS A. SIMONPETRI
Clerk
U.S. District Court

/s/ Ramon A. Alfaro
By: RAMON A. ALFARO
Chief Deputy Clerk

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APPENDIX C

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

Civil No. 76-1434

CARMELO BRACERO COLON, on behalf of his son, DELIO
BRACERO, NILDA MELENDEZ VEGA, PLAINTIFFS

v.

DAVID MATTHEWS, Secretary of Health,
Education and Welfare, DEFENDANT

NOTICE OF APPEAL

Notice is hereby given that the defendant in the
above captioned case appeals to the Supreme Court
of the United States, pursuant to Title 28, United
States Code, Section 1252, from the Judgment of the
District Court entered in this action on March 29,
1977.

San Juan, Puerto Rico, April 27, 1977.

JULIO MORALES SANCHEZ
United States Attorney

/s/ J. A. A. GRUBB
JOSE A. ACOSTA-GRUBB
Assistant U.S. Attorney